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OCT 10 2006

FAX TRANSMISSION**DATE:** October 10, 2006**PTO IDENTIFIER:** Application Number 10/607,792-Conf. #6267
Patent Number**Inventor:** Robert T. Beierle**MESSAGE TO:** Office of Petitions, US Patent and Trademark Office**FAX NUMBER:** (571) 273-8300**FROM:** ROBERT R. RICHARDSON, P.S.

Robert R. Richardson

PHONE: (360) 692-0626**Attorney Dkt. #:** BA1-01-0588 (01-588)**PAGES (Including Cover Sheet):** 38**CONTENTS:** Petition to Revive Unavoidably Abandoned Application and copy (6 pages)
Declaration by Applicant's Attorney Robert R. Richardson (4 pages)
Exhibits A-L to Declaration (24 pages)
Fee Transmittal (1 page)
Payment by credit card. Form PTO-2038 is attached (1 page)
Certificate of Transmission (1 page)

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PTO/SB/97 (08-04)

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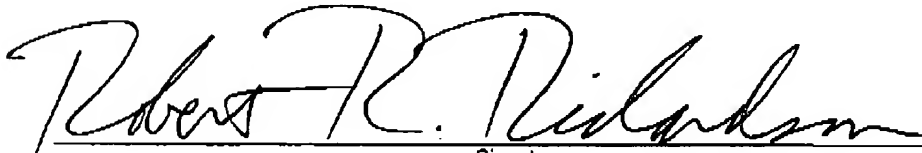
Application No. (if known): 10/607,792

Attorney Docket No.: BA1-01-0588 (01-588)

Certificate of Transmission under 37 CFR 1.8

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on October 10, 2006
Date



Signature

Robert R. Richardson

Typed or printed name of person signing Certificate

40,143

Registration Number, if applicable

(360) 692-0626

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Fax Cover Sheet (1 page)

Petition to Revive Unavoidably Abandoned Application and copy (6 pages)

Declaration by Applicant's Attorney Robert R. Richardson (4 pages)

Exhibits A-L to Declaration (24 pages)

Fee Transmittal (1 page)

Payment by credit card. Form PTO-2038 is attached (1 page)

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Dated: 10/10/06 Signature: Robert R. Richardson
(Robert R. Richardson)

Docket No.: BA1-01-0588 (01-588)
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Robert T. Beierle

Application No.: 10/607,792

Confirmation No.: 6267

Filed: June 27, 2003

Art Unit: 2841

For: PASSIVE REPEATER/TERMINATOR

Examiner: H. S. Bui

**PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained. Applicant hereby petitions the Commissioner for revival of the above-identified application for patent.

An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

The Declaration of Applicant's Attorney Robert R. Richardson of the law firm of Robert R. Richardson, P.S. is being filed concurrently herewith in support of applicant's Petition. A copy

10/11/2006 TL0111 00000010 10607792

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Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

of the proposed response to the October 5, 2005 Office Action, which documents the oral election made November 9, 2005 and was filed with the Petition to Withdraw Holding of Abandonment on June 19, 2006, is also enclosed herewith as Exhibit I to the Declaration of Applicant's Attorney Robert R. Richardson.

The reasons for the unavoidable delay, as fully set forth in the accompanying Declaration of Applicant's Attorney Robert R. Richardson, provide adequate basis for the revival of the present application.

In view of the basis described above and in the Declaration of Applicant's Attorney Robert R. Richardson submitted herewith, Petitioner respectfully submits that an adequate showing has been set forth above of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, and that the reasons for the unavoidable delay, as fully set forth above, provide adequate basis for the revival of the present application.

In view of the basis described above, Petitioner respectfully requests entry, consideration, and granting of this Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a) for the above-referenced patent application. Petitioner respectfully requests revival of the above-referenced patent application, and entry of the written Response to Restriction Requirement submitted herewith as Exhibit I to the Declaration of Applicant's Attorney Robert Richardson.

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OCT 10 2006

Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

Please charge our Credit Card in the amount of \$500.00 covering the fee set forth in 37 CFR 1.17(l). Credit Card Payment Form SB-2038, with a signature from an authorized cardholder, is enclosed. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 503048, under Order No. BA1-01-0588 (01-588). A duplicate copy of this paper is enclosed.

Dated: October 10, 2006

Respectfully submitted,

By 

Robert R. Richardson

Registration No.: 40,143

ROBERT R. RICHARDSON, P.S.

P.O. Box 2677

Silverdale, Washington 98383-2677

(360) 692-0626

Attorney for Applicant

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Dated: 10/10/06Signature: Robert R. Richardson

(Robert R. Richardson)

Docket No.: BA1-01-0588 (01-588)
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Robert T. Beierle

Application No.: 10/607,792

Confirmation No.: 6267

Filed: June 27, 2003

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For: PASSIVE REPEATER/TERMINATOR

Examiner: H. S. Bui

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PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

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The Declaration of Applicant's Attorney Robert R. Richardson of the law firm of Robert R. Richardson, P.S. is being filed concurrently herewith in support of applicant's Petition. A copy

Application No.: 10/607,792

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of the proposed response to the October 5, 2005 Office Action, which documents the oral election made November 9, 2005 and was filed with the Petition to Withdraw Holding of Abandonment on June 19, 2006, is also enclosed herewith as Exhibit I to the Declaration of Applicant's Attorney Robert R. Richardson.

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Application No.: 10/607,792

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Dated: October 10, 2006

Respectfully submitted,

By 

Robert R. Richardson

Registration No.: 40,143

ROBERT R. RICHARDSON, P.S.

P.O. Box 2677

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(360) 692-0626

Attorney for Applicant

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Dated: 10/10/06Signature: Robert R. Richardson
(Robert R. Richardson)Docket No.: BA1-01-0588 (01-588)
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Robert T. Beierle

Application No.: 10/607,792

Confirmation No.: 6267

Filed: June 27, 2003

Art Unit: 2841

For: PASSIVE REPEATER/TERMINATOR

Examiner: H. S. Bui

DECLARATION OF APPLICANT'S ATTORNEY ROBERT R. RICHARDSON

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Robert R. Richardson, declare and state as follows:

1. This declaration is being filed concurrently herewith in support of applicant's Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a). A copy of the proposed response to the October 5, 2005 Office Action, which documents the oral election made November 9, 2005 and was filed with the Petition to Withdraw Holding of Abandonment on June 19, 2006, is enclosed herewith as Exhibit I to this Declaration.

2. The underlying facts are set forth as follows.

a. A Restriction Requirement (Exhibit A) was mailed on 3 October 2005 in the above referenced patent application. On 9 November 2005 at 1:25 PM (Pacific Time), Applicant's undersigned attorney called and spoke with Examiner Bui, the Examiner in charge of examination of the above-referenced patent application. See Applicant's attorney's itemized telephone bill of December 17, 2005, at p. 5 (Exhibit B). During the telephone call, Applicant's attorney elected

Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

Claims 1-18 for continued prosecution and the Examiner acknowledged the election of Claims 1-18 for continued prosecution. *See* Interview Summary (Exhibit C). Applicant's attorney asked the Examiner if a one month extension of time was necessary because the telephonic election was being made three days after the one month statutory period for response. *See Id.* The Examiner stated that the Office would take care of it. *See Id.*

b. Examiner Bui forgot about the call. *See Id.*

c. Applicant's attorney periodically checked Private PAIR to monitor status of the above-referenced patent application to check for issuance of a substantive action on the merits.

d. Applicant's attorney was out of the office from 26 April 2006 until 1 May 2006. An extended absence greeting on Applicant's attorney's voice mail stated that Applicant's attorney was out of the office from 26 April 2006 until 1 May 2006 and that calls would be returned upon return to the office on 1 May 2006.

e. The Examiner left a message on Applicant's attorney's phone on April 27, 2006. *See* Notice of Abandonment. Contrary to the statement made in the Notice of Abandonment, the Examiner's message was not to "confirm the abandonment" of the application. The Examiner's message instead was to discuss "status of" the application. Abandonment was not mentioned in the Examiner's message. *See* Telephone Call Record of 1 May 2006 (Exhibit D). Applicant's attorney called Examiner Bui at 8:26 AM on 1 May 2006 upon return to the office and left a message that the status of the application was that Claims 1-18 were elected via the teleconference on 9 November 2006. *See Id.*; *see also* Applicant's attorney's itemized telephone bill of May 17, 2006, at p. 6 (Exhibit E).

f. A Notice of Abandonment (Exhibit F) was mailed on 2 May 2006 – that is, the day after a message was left with Examiner Bui that the status of the case was election of claims 1-18 via the teleconference on 9 November 2006. Applicant's attorney received the Notice of Abandonment on 3 May 2006 (after close of business in Alexandria, Virginia). The Notice of

Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

Abandonment was the first indication to Applicant's attorney regarding abandonment of the patent application.

g. On 4 May 2006 at 8:45 AM (Pacific Time), Applicant's attorney called Examiner Bui to discuss the Notice of Abandonment. *See* Applicant's attorney's itemized telephone bill of May 17, 2006, at p. 7 (Exhibit G). Examiner Bui was unavailable, so Applicant's attorney left a voice mail message with Examiner Bui to discuss the Notice of Abandonment. Because Examiner Bui was unavailable, at 8:48 AM (Pacific Time) on 4 May 2006 Applicant's attorney called and spoke with Examiner Bui's supervisor, Supervisory Patent Examiner Cuneo. Examiner Cuneo said she would look into the situation and get back to Applicant's attorney by close of business on Monday 8 May 2006. *See Id.*

h. Applicant's attorney did not receive any call from Examiner Cuneo by close of business on Monday 8 May 2006. On Tuesday 9 May 2006 at 12:00 PM (Pacific Time), Applicant's attorney still had not heard from Examiner Cuneo. Applicant's attorney called Examiner Cuneo at 12:00 PM (Pacific Time) on Tuesday 9 May 2006 to follow up with Examiner Cuneo. Examiner Cuneo was unavailable, so Applicant's attorney left a voice mail message with Examiner Cuneo.

i. On 31 May 2006 at 10:30 AM (Pacific Time), Examiner Cuneo called Applicant's attorney and stated that the United States Patent and Trademark Office would make record of these events in the file and that Applicant must file a general petition under section 181 to withdraw the holding of abandonment. *See* Interview Summary. An Interview Summary was mailed on 14 June 2006 and received by Applicant's attorney on 17 June 2006.

j. A Petition to Withdraw Holding of Abandonment (Exhibit H) was filed on June 19, 2006, along with a Response to Restriction Requirement (Exhibit I), a Petition for Extension of Time (Exhibit J), and a Credit Card Payment Form (Exhibit K). A Decision (Exhibit L) in reference to the petition was mailed on September 25, 2006. The Decision dismissed the petition. *See* Decision mailed September 25, 2006, p. 2. However, the Decision stated that "in light of the

Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

circumstances of this case, petitioner may wish to consider filing a petition to revive [an application for patent abandoned unavoidably] under 37 C.F.R. 1.137(a)." *Id.*, p. 3 (emphasis supplied).

k. A Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a) is submitted herewith.

Dated: October 10, 2006

Respectfully submitted,



Robert R. Richardson

Registration No.: 40,143

ROBERT R. RICHARDSON, P.S.

P.O. Box 2677

Silverdale, Washington 98383-2677

(360) 692-0626

Attorney for Applicant

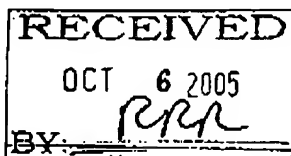
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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,792	06/27/2003	Robert T. Boerle	BOEI-1-1191	6267
7590 10/03/2005				
ROBERT R. RICHARDSON, P.S. P.O. BOX 2677 SILVERDALE, WA 98683-2677				
EXAMINER BUI, HUNG S				
ART UNIT 2841 PAPER NUMBER				

DATE MAILED: 10/03/2005



Please find below and/or attached an Office communication concerning this application or proceeding.

BAI-01-0588
EXHIBIT A
P. 1/4

OCT 10 2006

Office Action Summary	Application No.	Applicant(s)	
	10/607,792	BEIERLE, ROBERT T.	
	Examiner	Art Unit	
	Hung S. Bul	2841	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any claimed patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

BA1-01-0588
EXHIBIT A
P. 2/4

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: ____ | 6) <input type="checkbox"/> Other: ____ |

Application/Control Number: 10/607,792
Art Unit: 2841

BA1-01-0588
EXHIBIT A
P. 3/4

Page 2

DETAILED ACTION***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18, drawn to a passive terminator, classified in class 455, subclass 13.4.
 - II. Claims 19-28, drawn to a method of passively terminating first and second nodes, classified in class 379, subclass 413.
 - III. Claims 29-37, drawn to a system for transmitting and receiving signals, classified in class 710, subclass 100The inventions are distinct, each from the other because of the following reasons:

Inventions I-II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as a passive terminator not using the method of passively terminating first and second nodes of II or the transmission system of III, invention II has separate utility such as a method of passively terminating first and second nodes not using the passive terminator of I or the transmission system of III, invention III has separate utility such as a transmission system not using the passive terminator of I or the method of passively terminating first and second nodes of II. See MPEP § 806.05(d).

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Application/Control Number: 10/607,792
Art Unit: 2841

BA1-01-0588
EXHIBIT A
P. 4/4

Page 3


3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung S. Bui whose telephone number is (571) 272-2102. The examiner can normally be reached on Monday-Friday 8:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hung Bui
Art Unit 2841
9/29/05


KAMAND CUNEO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800



BA1-01-588
EXHIBIT B
P. 1/1

ROBERT R RICHARDSON
Bill Date: Dec 17, 2005
Account No: 360-692-0626 574B

Page 5



Customer Service 1 800 603-6000

Summary of Usage Reports

ROBERT R RICHARDS Qwest Choice Long Distance

Description	Period	Calls	Min:Sec	Charges
1+ INTERSTATE	NITE	4	9:54	.15
Subtotal		67	355:48	10.26
1+ INTRALATA	DAY	53	407:54	10.68
1+ INTRALATA	NITE	2	2:48	.09
Subtotal		55	410:42	10.77
Total		122	766:30	\$21.03

Service Detail - Plan/Feature Charges

ROBERT R RICHARDS

Description	Qty.	Period	Nonrecurring Charges	Monthly Charges	Total Charges
Access Line Charge	2	NOV 08-DEC 07	0.00	1.00	1.00
Qwest Choice MRC	2	NOV 08-DEC 07	0.00	7.98	7.98
Total Plan/Feature Charges			\$0.00	\$8.98	\$8.98

Service Detail - Long Distance Usage

ROBERT R RICHARDS

360-692-0626

No.	Date	Time	Called Number	Location	Min:Sec	Charges
1.	Nov 08	11:26A	206 655-5861	SEATTLE WA	1:12	.06
2.	Nov 09	11:26A	425 653-3601	BELLEVUE WA	22:30	1.12
3.	Nov 09	1:25P	571 272-2102	ALEXANDRIA VA	4:00	.20
4.	Nov 09	1:47P	562 797-5840	ALAMITOS CA	30:48	1.54
5.	Nov 09	4:45P	713 572-3282	HOUSTON TX	0:30	.03
6.	Nov 10	9:22A	949 790-1325	IRVINE CA	4:24	.22
7.	Nov 10	2:17P	714 374-4018	HUNTINGTON BEACH CA	21:18	1.06

continued on back

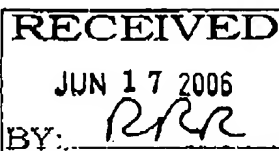


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,792	06/27/2003	Robert T. Beierle	BOEI-1-1191	6267

7590 06/14/2006
ROBERT R. RICHARDSON, P.S.
P.O. BOX 2677
SILVERDALE, WA 98683-2677



EXAMINER

BUL HUNG S

ART UNIT PAPER NUMBER

2841

DATE MAILED: 06/14/2006

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BA1-01-0588
EXHIBIT C
P. 1 / 3

OCT 10 2006

W

Interview Summary	Application No.	Applicant(s)	
	10/607,792	BEIERLE, ROBERT T.	
	Examiner	Art Unit	
	Hung S. Bui	2841	

All participants (applicant, applicant's representative, PTO personnel):

(1) Hung S. Bui.(3) Kammie Cuneo

BAI-01-0588

EXHIBIT C

(2) Robert Richardson.

(4) _____


P. 2/3

Date of Interview: 11/09/05; 05/04/06, 5/31/06Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal (copy given to: 1) ☐ applicant 2) ☐ applicant's representativeExhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____Claim(s) discussed: none.Identification of prior art discussed: none.Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


KAMMIE CUNEO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800
Examiner's signature, if required

Continuation Sheet (PTOL-413)

-BA1-01-0588
EXHIBIT C
P. 3/3

Application No. 10/607,792

Continuation of Substance of Interview Including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative, Robert Richardson, called the examiner on 11/09/2005. The applicant's representative told the examiner over the phone that the applicant elected group 1, claims 1-18 in response to the written restriction. The examiner told the applicant it was acknowledged. The applicant asked the examiner if a one month extension of time was necessary since applicant was calling three days late. The examiner told the applicant that the office would take care of it. Later, the examiner forgot about the call. When there was no response received after 6 months, the examiner called and left to applicant a message about abandonment. The applicant called the examiner (and the examiner's supervisor) back a few days later on May 4th, 2006, but the examiner had already mailed out the abandonment form. On May 31st, 2006, the examiner's supervisor informed the applicant that the USPTO would make record of these events in the file, but that the applicant must file a petition and written response to withdraw the holding of abandonment.

BA1-01-0588
EXHIBIT D
P.1/1

ROBERT R. RICHARDSON, P.S.

Telephone Call Record

From/Org:	Env Bui	Date:	5/1/06
To/Org:	RAA	Start time:	8:30
Phone No.:	(571) 470-1100	Stop time:	
Re:	10/607 002	Matter:	BA1-01-0588

msg re: status of case

I left message later in the day

By: RAA



BA1-0T-0588

EXHIBIT E

P. 1/1

ROBERT RICHARDSON

Bill Date: May 17, 2006

Account No: 360-692-0626 574B

Page 6

Service Detail - Long Distance Usage

360-692-0626

No.	Date	Time	Called Number	Location	Min:Sec	Charges
1.	Apr 13	12:14P	949 790-1320	IRVINE CA	7:18	.36
2.	Apr 14	9:25A	206 655-4827	SEATTLE WA	0:30	.03
3.	Apr 14	9:26A	425 985-4859	BELLEVUE WA	6:48	.34
4.	Apr 14	9:51A	314 703-6142	LADUE MO	0:30	.02
5.	Apr 14	9:51A	314 703-6142	LADUE MO	0:30	.03
6.	Apr 14	9:51A	314 545-6868	LADUE MO	0:30	.02
7.	Apr 14	11:10A	571 272-4200	ALEXANDRIA VA	2:06	.11
8.	Apr 14	11:13A	571 272-4200	ALEXANDRIA VA	9:00	.45
9.	Apr 14	11:25A	949 790-1370	IRVINE CA	3:12	.16
10.	Apr 14	3:19P	949 790-1320	IRVINE CA	1:48	.09
11.	Apr 14	3:36P	206 375-5777	SEATTLE WA	9:36	.48
12.	Apr 17	3:22P	312 326-7004	CHICAGO IL	0:36	.03
13.	Apr 17	3:24P	561 981-4497	BOCA RATON FL	0:54	.04
14.	Apr 18	10:16A	425 985-4859	BELLEVUE WA	1:06	.06
15.	Apr 18	10:47A	949 790-1370	IRVINE CA	2:48	.14
16.	Apr 18	11:07A	312 326-7004	CHICAGO IL	0:30	.02
17.	Apr 18	11:48A	312 326-7004	CHICAGO IL	0:30	.03
18.	Apr 18	11:49A	561 981-4497	BOCA RATON FL	6:12	.31
19.	Apr 18	1:45P	425 985-4859	BELLEVUE WA	0:30	.02
20.	Apr 18	1:46P	312 326-7004	CHICAGO IL	0:30	.03
21.	Apr 19	10:28A	425 653-3601	BELLEVUE WA	5:00	.25
22.	Apr 19	1:16P	561 981-4497	BOCA RATON FL	0:30	.02
23.	Apr 19	1:17P	312 326-7004	CHICAGO IL	0:30	.03
24.	Apr 19	1:25P	561 981-4497	BOCA RATON FL	0:30	.02
25.	Apr 19	1:26P	312 326-7004	CHICAGO IL	0:30	.03
26.	Apr 19	1:27P	425 985-4859	BELLEVUE WA	1:06	.05
27.	Apr 19	2:51P	206 524-6520	SEATTLE WA	27:06	1.36
28.	Apr 20	9:05A	206 652-0890	SEATTLE WA	20:00	1.00
29.	Apr 20	9:56A	425 985-4859	BELLEVUE WA	0:30	.02
30.	Apr 20	9:56A	425 985-4859	BELLEVUE WA	0:30	.03
31.	Apr 20	1:02P	425 985-4859	BELLEVUE WA	0:54	.04
32.	Apr 20	3:43P	312 326-7004	CHICAGO IL	0:30	.03
33.	Apr 20	7:29P	425 653-3601	BELLEVUE WA	1:12	.06
34.	Apr 21	11:51A	561 981-4497	BOCA RATON FL	0:30	.02
35.	Apr 21	11:51A	312 326-7004	CHICAGO IL	0:30	.03
36.	Apr 23	8:43P	509 766-7000	MOSES LAKE WA	2:12	.11
37.	Apr 24	9:41A	571 272-1173	ALEXANDRIA VA	1:00	.05
38.	Apr 24	12:42P	571 272-1173	ALEXANDRIA VA	1:36	.08
39.	Apr 25	2:14P	312 326-7004	CHICAGO IL	0:30	.02
40.	Apr 25	2:14P	561 981-4497	BOCA RATON FL	20:48	1.04
41.	Apr 30	10:12P	206 655-7981	SEATTLE WA	1:36	.08
42.	May 01	8:25A	571 272-2101	ALEXANDRIA VA	0:36	.03
43.	May 01	8:26A	571 272-2102	ALEXANDRIA VA	1:48	.09
44.	May 01	8:34A	312 326-7004	CHICAGO IL	0:48	.04
45.	May 01	9:45A	312 326-7004	CHICAGO IL	31:24	1.49
46.	May 01	10:38A	206 655-5231	SEATTLE WA	2:00	.00
47.	May 01	10:45A	949 790-1320	IRVINE CA	2:06	.00
48.	May 01	11:32A	206 655-7981	SEATTLE WA	1:30	.00
49.	May 01	11:34A	206 655-7982	SEATTLE WA	0:30	.00
50.	May 01	12:15P	425 985-4859	BELLEVUE WA	7:42	.00
51.	May 02	9:24A	312 326-7004	CHICAGO IL	16:06	.00



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,792	06/27/2003	Robert T. Beierle	BOEI-1-1191	.6267

7590 05/02/2006
ROBERT R. RICHARDSON, P.S.
P.O. BOX 2677
SILVERDALE, WA 98683-2677

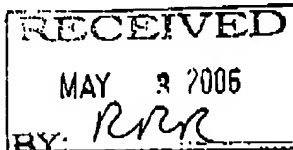
EXAMINER

BUI, HUNG S

ART UNIT PAPER NUMBER

2841

DATE MAILED: 05/02/2006



Please find below and/or attached an Office communication concerning this application or proceeding.

BA1-01-0588
EXHIBIT F
p. 1/2

OCT 10 2006

Notice of Abandonment	Application No. 10/607,792 Examiner Hung S. Bui	Applicant(s) BEIERLE, ROBERT T. Art Unit 2841
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

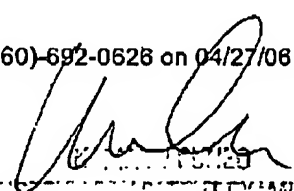
This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 03 October 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, on the _____, dated _____, from the mailing date of the Notice of Allowance (PTOL-85).

BA1-01-0588
EXHIBIT F
 P. 2/2

 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____, which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

 A telephone call was made to attorney for applicant, Robert R. Richardson at (360)-692-0626 on 04/27/06 to confirm the abandonment of the application.


 HUNG S. BUI
 PATENT EXAMINER
 CENTRAL FAX CENTER 2800

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



ROBERT R RICHARDSON
 Bill Date: May 17, 2006
 Account No: 360-692-0626 574B

BA1-01-0588
 EXHIBIT G-
 P. 1/1

Page 7

Service Detail -- Long Distance Usage

360-692-0626

No.	Date	Time	Called Number	Location	Min:Sec	Charges
1.	May 02	9:42A	312 326-7004	CHICAGO IL	2:18	.00
2.	May 02	10:14A	206 655-5231	SEATTLE WA	4:48	.00
3.	May 02	10:25A	425 865-3371	BELLEVUE WA	2:18	.00
4.	May 02	10:59A	949 790-1354	IRVINE CA	2:18	.00
5.	May 02	11:06A	206 655-7982	SEATTLE WA	4:48	.00
6.	May 02	12:46P	312 326-7004	CHICAGO IL	13:48	.00
7.	May 02	1:41P	206 655-5523	SEATTLE WA	18:30	.00
8.	May 02	3:51P	949 790-1354	IRVINE CA	3:24	.00
9.	May 03	9:16A	949 790-1357	IRVINE CA	4:42	.00
10.	May 03	9:59A	949 790-1354	IRVINE CA	2:18	.00
11.	May 03	10:25A	703 305-8309	ALEXANDRIA VA	1:54	.00
12.	May 03	10:33A	949 790-1370	IRVINE CA	0:36	.00
13.	May 03	11:11A	425 717-2047	EVERETT WA	6:36	.00
14.	May 03	11:18A	949 790-1370	IRVINE CA	19:54	.00
15.	May 03	11:41A	714 896-3791	WESTMINSTR CA	1:30	.00
16.	May 03	1:53P	206 544-1350	SEATTLE WA	0:30	.00
17.	May 03	1:54P	206 399-7931	SEATTLE WA	0:36	.00
18.	May 03	2:40P	949 790-1307	IRVINE CA	1:30	.00
19.	May 03	5:09P	206 399-7931	SEATTLE WA	7:06	.00
20.	May 04	8:45A	571 272-2102	ALEXANDRIA VA	2:12	.00
21.	May 04	8:48A	571 272-1957	ALEXANDRIA VA	8:54	.00
22.	May 04	1:49P	571 272-2102	ALEXANDRIA VA	4:48	.00
23.	May 04	1:55P	949 790-1354	IRVINE CA	1:18	.00
24.	May 04	2:14P	949 790-1354	IRVINE CA	0:36	.00
25.	May 04	2:21P	949 790-1354	IRVINE CA	0:36	.00
26.	May 04	2:32P	949 790-1354	IRVINE CA	0:36	.00
27.	May 04	2:39P	805 373-4170	THOUSAOAKS CA	10:24	.00
28.	May 04	3:00P	949 790-1354	IRVINE CA	0:36	.00
29.	May 04	3:43P	949 790-1354	IRVINE CA	0:30	.00
30.	May 04	3:57P	949 790-1354	IRVINE CA	0:30	.00
31.	May 05	10:02A	949 790-1353	IRVINE CA	21:36	.00
32.	May 05	11:49A	805 373-4244	THOUSAOAKS CA	0:30	.00
33.	May 05	1:45P	949 790-1320	IRVINE CA	3:24	.00
34.	May 05	2:48P	805 373-4170	THOUSAOAKS CA	1:00	.00
35.	May 05	3:20P	949 790-1320	IRVINE CA	2:30	.00

Total calls for 360-692-0626	97	510:42	\$15.99
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360-692-6584

No.	Date	Time	Called Number	Location	Min:Sec	Charges
36.	Apr 10	10:06A	703 308-6672	ALEXANDRIA VA	1:30	.07
37.	Apr 18	2:54P	425 671-0313	BELLEVUE WA	0:54	.04

**RECEIVED
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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

Dated: 6/19/06Signature: Robert R. Richardson

(Robert R. Richardson)

Docket No.: BA1-01-0588 (01-588)
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**In re Patent Application of:
Robert T. Beierle

Application No.: 10/607,792

Confirmation No.: 6267

Filed: June 27, 2003

Art Unit: 2841

For: PASSIVE REPEATER/TERMINATOR

Examiner: H. S. Bui

**PETITION UNDER 37 CFR 1.181 FOR WITHDRAWAL OF HOLDING
OF ABANDONMENT OF PATENT APPLICATION**MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450BA1-01-0588
EXHIBIT **H**
PAGE **1 / 4**

Dear Sir:

A Notice of Abandonment was mailed in the above-referenced patent application on May 2, 2005. The Notice of Abandonment stated that the application was abandoned in view of Applicant's failure to timely file a proper reply to the Office letter mailed on 3 October 2005, and that no reply has been received. The Notice of Abandonment also stated that a telephone call was made to applicant's undersigned attorney on 27 April 2006 to confirm the abandonment of the application.

I. FACTS

The underlying facts are set forth as follows.

A Restriction Requirement (Exhibit A) was mailed on 3 October 2005 in the above referenced patent application. On 9 November 2005 at 1:25 PM (Pacific Time), Applicant's undersigned attorney called and spoke with Examiner Bui, the Examiner in charge of examination

Application No.: 10/607,792
BAI-01-0588
EXHIBIT H
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et No.: BAI-01-0588 (01-588)

of the above-referenced patent application. *See* Applicant's attorney's itemized telephone bill of December 17, 2005, at p. 5 (Exhibit B). During the telephone call, Applicant's attorney elected Claims 1-18 for continued prosecution and the Examiner acknowledged the election of Claims 1-18 for continued prosecution. *See* Interview Summary (Exhibit C). Applicant's attorney asked the Examiner if a one month extension of time was necessary because the telephonic election was being made three days after the one month statutory period for response. *See Id.* The Examiner stated that the Office would take care of it. *See Id.*

Examiner Bui forgot about the call. *See Id.*

Applicant's attorney periodically checked Private PAIR to monitor status of the above-referenced patent application to check for issuance of a substantive action on the merits.

Applicant's attorney was out of the office from 26 April 2006 until 1 May 2006. An extended absence greeting on Applicant's attorney's voice mail stated that Applicant's attorney was out of the office from 26 April 2006 until 1 May 2006 and that calls would be returned upon return to the office on 1 May 2006.

The Examiner left a message on Applicant's attorney's phone on April 27, 2006. *See* Notice of Abandonment. Contrary to the statement made in the Notice of Abandonment, the Examiner's message was not to "confirm the abandonment" of the application. The Examiner's message instead was to discuss "status of" the application. Abandonment was not mentioned in the Examiner's message. *See* Telephone Call Record of 1 May 2006 (Exhibit D). Applicant's attorney called Examiner Bui at 8:26 AM on 1 May 2006 upon return to the office and left a message that the status of the application was that Claims 1-18 were elected via the teleconference on 9 November 2006. *See Id.*; *see also* Applicant's attorney's itemized telephone bill of May 17, 2006, at p. 6 (Exhibit E).

A Notice of Abandonment (Exhibit F) was mailed on 2 May 2006 – that is, the day after a message was left with Examiner Bui that the status of the case was election of claims 1-18 via the teleconference on 9 November 2006. Applicant's attorney received the Notice of Abandonment on

Application No.: 10/607,792
BA1-01-0588
EXHIBIT H
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ket No.: BA1-01-0588 (01-588)

3 May 2006 (after close of business in Alexandria, Virginia). The Notice of Abandonment was the first indication to Applicant's attorney regarding abandonment of the patent application.

On 4 May 2006 at 8:45 AM (Pacific Time), Applicant's attorney called Examiner Bui to discuss the Notice of Abandonment. *See* Applicant's attorney's itemized telephone bill of May 17, 2006, at p. 7 (Exhibit G). Examiner Bui was unavailable, so Applicant's attorney left a voice mail message with Examiner Bui to discuss the Notice of Abandonment. Because Examiner Bui was unavailable, at 8:48 AM (Pacific Time) on 4 May 2006 Applicant's attorney called and spoke with Examiner Bui's supervisor, Supervisory Patent Examiner Cuneo. Examiner Cuneo said she would look into the situation and get back to Applicant's attorney by close of business on Monday 8 May 2006. *See Id.*

Applicant's attorney did not receive any call from Examiner Cuneo by close of business on Monday 8 May 2006. On Tuesday 9 May 2006 at 12:00 PM (Pacific Time), Applicant's attorney still had not heard from Examiner Cuneo. Applicant's attorney called Examiner Cuneo at 12:00 PM (Pacific Time) on Tuesday 9 May 2006 to follow up with Examiner Cuneo. Examiner Cuneo was unavailable, so Applicant's attorney left a voice mail message with Examiner Cuneo.

On 31 May 2006 at 10:30 AM (Pacific Time), Examiner Cuneo called Applicant's attorney and stated that the United States Patent and Trademark Office would make record of these events in the file and that Applicant must file a general petition under section 181 to withdraw the holding of abandonment. *See* Interview Summary. An Interview Summary was mailed on 14 June 2006 and received by Applicant's attorney on 17 June 2006.

II. CONCLUSION

In view of the basis described above, Applicant respectfully requests entry, consideration and granting of this Petition to Withdraw Holding of Abandonment of the above-referenced patent application. Applicant respectfully requests withdrawal of the holding of abandonment and revival of the above-referenced patent application, and entry of the written Response to Restriction Requirement filed herewith. A One Month Petition for Extension of Time (based upon making the

Application No.: 10/607,792 BA1-01-0588
EXHIBIT H
PAGE 4/4

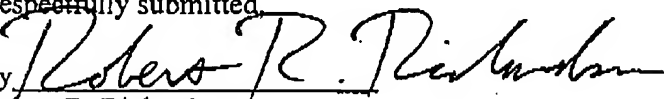
cket No.: BA1-01-0588 (01-588)

telephonic election of claims 1-18, that was acknowledged by Examiner Bui, three days after expiration of the one month statutory period for response) is also submitted herewith.

Applicant believes no fee is due for this petition submitted under 37 CFR 1.181. However, if a fee is due, please charge any fee required to Deposit Account no. 503048, under order no. BA1-01-0588 (01-588), from which the undersigned is authorized to draw.

Dated: June 19, 2006

Respectfully submitted,

By 
Robert R. Richardson

Registration No.: 40,143
ROBERT R. RICHARDSON, P.S.
P.O. Box 2677
Silverdale, Washington 98383-2677
(360) 692-0626
Attorney for Applicant

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OCT 10 2006

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

Dated: 6/19/06Signature: Robert R. Richardson
(Robert R. Richardson)Docket No.: BA1-01-0588 (01-588)
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Robert T. Beierle

Application No.: 10/607,792

Confirmation No.: 6267

Filed: June 27, 2003

Art Unit: 2841

For: PASSIVE REPEATER/TERMINATOR

Examiner: H. S. Bui

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

BA1-01-0588

EXHIBIT IPAGE 1 / 2

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed October 3, 2005, Applicant hereby provisionally elects claims 1-18 for continued examination and withdraws Claims 19-37.

The Office Action has required restriction between:

Group I, Claims 1-18, drawn to a passive terminator, classified in class 455, subclass 13.4;

Group II, Claims 19-28, drawn to a method of passively terminating first and second nodes, classified in class 379, subclass 413; and

Group III, Claims 29-37, drawn to a system for transmitting and receiving signals, classified in class 710, subclass 100.


Application No.: 10/607,792

Docket No.: BA1-01-0588 (01-588)

On November 9, 2005, Applicant's undersigned attorney elected Claims 1-18 during a telephone interview with the Examiner. No substantive Office Action on the merits has yet been received subsequent to the telephonic election of Claims 1-18 made on November 18, 2005. Applicant respectfully requests this Response to Restriction Requirement be made of record and that a substantive Office Action on the merits be issued regarding the above-referenced patent application.

Dated: June 19, 2006

Respectfully submitted,

By 

Robert R. Richardson

Registration No.: 40,143

ROBERT R. RICHARDSON, P.S.

P.O. Box 2677

Silverdale, Washington 98383-2677

(360) 692-0626

Attorney for Applicant

BA1-01-0588

EXHIBIT *I*

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OCT 16 2006

BA1-01-0588
EXHIBIT J
PAGE 1 / 1

PTO/SB/22 (12-04)
Approved for use through 7/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Send to a collection of information unless it displays a valid OMB control number.

Under 1. PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005 (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4918).)		Docket Number (Optional) BA1-01-0588 (01-588)	
Application Number 10/607,792-Conf. #6267		Filed June 27, 2003	
For PASSIVE REPEATER/TERMINATOR			
Art Unit 2841		Examiner H. S. Bul	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application. The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):			
		<u>Fee</u>	<u>Small Entity Fee</u>
<input checked="" type="checkbox"/>	One month (37 CFR 1.17(a)(1))	\$120	\$60
<input type="checkbox"/>	Two months (37 CFR 1.17(a)(2))	\$450	\$225
<input type="checkbox"/>	Three months (37 CFR 1.17(a)(3))	\$1020	\$510
<input type="checkbox"/>	Four months (37 CFR 1.17(a)(4))	\$1590	\$795
<input type="checkbox"/>	Five months (37 CFR 1.17(a)(5))	\$2160	\$1080
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. <input type="checkbox"/> A check in the amount of the fee is enclosed. <input checked="" type="checkbox"/> Payment by credit card. Form PTO-2038 is attached. <input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account. <input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>503048</u> . I have enclosed a duplicate copy of this sheet.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96). <input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>40,143</u> <input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
<u>Robert R. Richardson</u> Signature Robert R. Richardson Typed or printed name		<u>June 19, 2006</u> Date (360) 692-0626 Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of <u>1</u> forms are submitted.			

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

Dated: 6/19/06

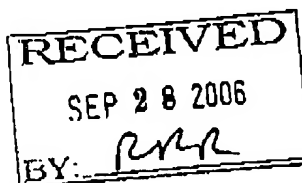
Signature: Robert R. Richardson (Robert R. Richardson)



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SEP 25 2006
OFFICE OF PETITIONS

In re Application of :
Robert T. Beierle :
Application No. 10/607,792 : ON PETITION
Filed: 27 June, 2003 :
Atty Docket 03321-P0002B :

This is a decision in reference to the petition filed under 37 CFR 1.181 on 19 June, 2006, to withdraw the holding of abandonment.

This application became abandoned on 4 November, 2005, for failure to timely reply to the Office action requiring restriction and/or election mailed on 3 October, 2005, which set a one (1) month shortened statutory period for reply. No extensions of the time for reply were obtained in accordance with 37 CFR 1.136(a). Notice of Abandonment was mailed on 2 May, 2006.

Petitioner states that applicant's attorney telephoned the examiner on 9 November, 2005, and orally elected Claims 1 - 18, and asked whether an extension of time was required. Petitioner further avers that the examiner stated that "the Office would take care of it." Later, petitioner states, the examiner forgot about the call. Petitioner further asserts that the examiner left a phone message for the attorney to discuss the status of the application on 27 April, 2006.

Petitioner's argument has been carefully considered, but is not persuasive.

In this regard, 37 CFR 1.135 states:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

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(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require...

The Office action mailed on 3 October, 2005, set a one (1) month shortened statutory period for reply. Petitioner, however, failed to timely respond to the Office action. As such, the application became abandoned for failure to timely respond to the outstanding Office action.

With regard to petitioner's assertion that the examiner "would take care of" the response, there is no showing in the written record to support that allegation. As MPEP 711.03(c) states, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985). Additionally, 37 CFR 1.2 states that the action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

While this is an unfortunate situation, the Office is nonetheless precluded from granting the requested relief. The responsibility was that of the applicant to timely submit a response to the Office action, and applicant failed so to do.¹

As such, the showing of record is that the abandonment resulted from the failure to petitioner to respond to the Office action requiring restriction or election, rather than an error on the part of the USPTO.

As such the application is properly held abandoned.

The petition is DISMISSED.

¹ See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).

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However, in light of the circumstances of this case, petitioner may wish to consider filing a petition to revive under 37 C.F.R. 1.137(a). A written response to the Office action mailed on 5 October, 2005, must also be filed with any petition to revive the application.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

D Wood
Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

OCT 10 2006

PTO/SB/17 (12-04v2)
Approved for use through 7/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005		Complete if Known Application Number 10/607,792-Conf. #6287 Filing Date June 27, 2003 First Named Inventor Robert T. Beierle Examiner Name H. S. Bui Art Unit 2841 Attorney Docket No. BA1-01-0588 (01-588)	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27			
TOTAL AMOUNT OF PAYMENT	(\$)	500.00	

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) _____
☐ Deposit Account Deposit Account Number: 503048 Deposit Account Name: Robert R. Richardson, P.S.
 For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)
☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
		x				
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)			
		x				

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/50	(round up to a whole number) x		

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 1452 Petition to revive unavoidably abandoned ... 500.00

SUBMITTED BY			
Signature	<i>Robert R. Richardson</i>	Registration No. (Attorney/Agent)	40,143
Name (Print/Type)	Robert R. Richardson	Telephone	(360) 692-0626
		Date	October 10, 2006

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

Dated: 10/10/06

Signature: *Robert R. Richardson* (Robert R. Richardson)

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